

1 Jesse Aron Ross  
 2 #1095756-HDSP  
 3 P.O. Box 650  
 4 Indian Springs  
 5 NV. 89070

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
NOV - 6 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

6

7 UNITED STATES DISTRICT COURT  
 8 DISTRICT OF NEVADA  
 9 (Las Vegas)

10

11 Jesse Aron Ross,  
 12 Plaintiff,  
 13 -VS-

14 Brian Sandoval et al.,  
 15 Defendants

CASE NO:

2:17-cv-02386-APG-GWF

\* Motion for preliminary  
 injunction

16

17

18 Comes now above named Plaintiff, appearing  
 19 pro-se, incarcerated and In forma pauperis, to  
 20 respectfully move this court to issue a preliminary  
 21 injunction against the Defendants. This motion is based  
 22 upon the papers and proceedings on file. The attached  
 23 memorandum of points and authorities and any  
 24 oral argument permitted on the hearing of this  
 25 matter

26

27 Certificate of service Attached.

28

1 Memorandum of Points and Authorities

2

3 I. Procedural history

4 A. On September 25 2017 Plaintiff filed A First  
5 Amended Complaint ("FAC") in this case, along with  
6 a motion to Proceed In forma pauperis.

7

8 II. Table of Authorities

9 A. Fed. Rul. Civ. Pro ("FRCP") Rule 65

10 B. Stuhlbarg int'l Sales Co Inc -v- John D. Brush &  
11 Co Inc., 2140 F.3d 832 (8<sup>th</sup> cir. 2001) First cited  
12 on page Number: 6

13 C. Winter -v- Natural Res. Def. council Inc., 555  
14 U. S. 7, 129 S.Ct 365 (2008) First cited on page Number: 6

15 D. Alliance for the Wild Rockies -v- Cottrell 632 F.3d 1127  
16 (9<sup>th</sup> cir 2011) first cited on page Number: 6

17 E. Mazarek -v- Armstrong 520 U.S. 968, 117 S.Ct 1865 (1997)  
18 first cited on page Number: 7

19 F. Garcia -v- Google Inc. 786 F.3d 733 (7<sup>th</sup> cir 2015) 7

20 G. Hartford empire Co -v- united States 323 U.S. 386

21 first cited on page Number: 7

22 H. Shelton -v- National Collegiate Athletic Assn 539 F.2d  
23 1197 (9<sup>th</sup> cir 1976) first cited on page Number: 7

24 I. Lee -v- Mcmanus 543 F. SUPP 386 P.C. Kansas (1982),  
25 first cited on page Number: 6

26 J. Selah -v- Guard 255 F. SUPP 2d 92 N.D.N.Y. (2003),  
27 first cited on page Number: 9

28

29

1 K. Dixon-v- Bannister 845 F. SUPP 2d 1136  
2 (D. Nev 2012) First cited on page number: 8  
3  
4 L. Hunt-v- Dental Dept, 865 F.2d 198 (9<sup>th</sup> cir  
5 1989) First cited on page number: 8  
6  
7 M. Estelle-v- Gamble 429 U.S. 97, 97  
8 S.Ct 798 (1976) First cited on page number: 8  
9  
10 N. Helling-v- McKinney 509 U.S. 25, 113 S.Ct  
11 2475 (1993) First cited on page Number: 9  
12  
13 O. Crowley-v- Bannister 739 F.3d 967 (6<sup>th</sup> cir 2013),  
14 First cited on page Number: 9  
15  
16 P. Jett-v- Penner 439 F.3d 1091 (9<sup>th</sup> cir 2006) First cited  
17 on Page Number: 8  
18  
19 Q. Chance-v- Armstrong 143 F.3d 698 (2d Cir 1995),  
20 First cited on page number: 9  
21  
22 R. Title 18 USC section 3626  
23  
24  
25  
26  
27  
28  
29

1 III. Questions Presented

2 1) Does a severe tooth ache, with substantial foul  
3 tasting discharge constitute a serious medical need, Does  
4 the prison have a duty to treat Plaintiffs cavities, that  
5 causes him severe pain

6 2) What are the consequences of failing to  
7 treat Plaintiffs cavities.

8 3) What is a reasonable → vs- unreasonable  
9 delay in treating cavities that have exposed nerve,  
10 and possible infection/abscess.

11 4) What is the minimum standard of care (Dental),  
12 required by the Constitution.

13 5) How does the prison/litigation reform Act ("PIRA")  
14 apply to this case and request for injunction.

16 IV. Statement of Facts

17 A. On 1-21-17, 1-29-17, and 2-6-17, Plaintiff submitted  
18 dental requests to see a dentist at High Desert State Prison  
19 ("HDSP"), Plaintiff was seen by Dr. Magapith on  
20 3-27-17, however Dr. Magapith refused to treat all  
21 Plaintiff's cavities, and only treated one tooth.  
22 (See Plaintiff's First Amended complaint "FAC" page  
23 Number 6-V-Ln 10 to 18 and pg 6-W Line 1 to 15).

24 On 3-30-17 Plaintiff filed an administrative grievance  
25 ("FAC" pg 6-W-Lines 15 to 19). On 04-03-2017

26 Plaintiff grievance was "upheld" and "Granted",  
27 stating "Please be advised that the Dental  
28 Department was notified about your Dental issue

1  
2 we will Place you on the List to be seen by  
3 the dental department regarding your dental problem.  
4 Please wait until you get Seen on Your unit day.  
5 Thanks". See Exhibit "A" Attached  
6 B. As of November 1, 2017 plaintiff has  
7 Not been seen by the "HOSP" Dental department,  
8 209 days since the grievance was "Upheld", "Granted".  
9 C. Plaintiff Has 7-10 Visible cavities, 3 of which  
10 Causes Chronic pain, on of those three Causes  
11 Severe pain, with A exposed nerve, and regular  
12 Foul tasting discharge, eating breathing, drinking  
13 is painful, I often wake up due to severe pain.  
14 D. There are 2 Dentists for the Approx. 4,000  
15 offenders housed at "HOSP", the Facilities were  
16 only Built for  $\frac{1}{2}$  that number, AS A new Pr. Son  
17 Annex was added After the original Pr. Son was  
18 constructed.  
19 E. Plaintiff received A 30 day prescription for  
20 IBuprofen 600mg for his Broken nose, and even this  
21 had minimal effect on the pain, Plaintiff has received  
22 No Antibiotics or pain medicine from "HOSP" Dental.

23  
24 V Legal Standard.

25 The Federal Rules of Civil Procedure ("FRCP") provide  
26 for A Preliminary Injunction "FRCP" Rule 65.  
27 Notice must be given to the Adverse Party "FRCP"  
28 Rule 65 (A)(1), which Plaintiff has done. see  
29

1 Attached Certificate of Service. The standard for obtaining  
 2 A temporary restraining order and a preliminary injunction  
 3 are substantially the same (Stuhlbarg int'l Sales Co., Inc. v.  
 4 John D. Brush & Co Inc., 240 F.3d 832, at 839 n. 7  
 5 (9<sup>th</sup> Cir. 2001)). To qualify for a preliminary injunction, a  
 6 Plaintiff must satisfy A 4 Prong test: ① a likelihood  
 7 of success on the merits ② a likelihood of irreparable  
 8 harm ③ The Balance of hardships favor the plaintiff  
 9 and ④ an injunction is in the public interest. (Winter v.  
 10 Natural Res. Def. Council, Inc., 555 U.S. 7 at 20,  
 11 129 S.Ct 365 (2008)). Irreparable harm, the  
 12 threat of which is needed to obtain a preliminary  
 13 injunction includes physiological pain and or injury,  
 14 (Lee v. Mcmanus 543 F.Supp 386 D.C Kansas  
 15 1982) Alternatively under the sliding scale approach,  
 16 the plaintiff must demonstrate ① serious questions  
 17 on the merits ② a likelihood of irreparable harm  
 18 ③ the Balance of hardships tips sharply in the  
 19 Plaintiff's favor and ④ an injunction is in the public  
 20 interest. (Alliance for the wild Rockies v. Cattrell  
 21 632 F.3d 1127 at 1135 (9<sup>th</sup> Cir. 2011)). In the context  
 22 of a civil action challenging prison conditions, injunctive  
 23 relief must be narrowly drawn, extend no further than  
 24 necessary to correct the harm the court finds requires  
 25 Preliminary relief, and to be the least intrusive means  
 26 necessary to correct the harm. (18 USC section 3626(A)(2)).  
 27 The injunction must give substantial weight to any adverse  
 28 impact on public safety or the operation of the criminal  
 29

1 Justice system caused by the injunctive relief,  
 2 and shall respect the principles of comity set out in  
 3 18 USC section 3626 (A) (1) (B). It is important to  
 4 Note that Equitable relief by an injunction is  
 5 not penal (Hartford-Empire Co -v- United States  
 6 323 U.S. 386) A preliminary injunction is an  
 7 extraordinary and drastic ~~one~~ remedy, one that should  
 8 not be granted unless the movant by a clear showing,  
 9 carries the burden of persuasion (Shelton -v- National  
 10 Collegiate Athletic Assn 539 F2d 1197, 9<sup>th</sup> Cir. 1976;  
 11 and Mazarek -v- Armstrong 520 U.S. 968 at 972, 117 S.Ct  
 12 1865 1997). Where the moving party requests that  
 13 A preliminary injunction makes the non-moving  
 14 party take affirmative action, A court should  
 15 Deny the request Unless the facts and law  
 16 clearly favor the moving party. (Garcia -v- Google  
 17 Inc., 786 F.3d 733 at 740 9<sup>th</sup> Cir. 2015)

18

19 VI.

20 Issue. Plaintiff has multiple cavities, which cause extreme  
 21 pain, difficulty eating, sleeping, drinking. Plaintiff has  
 22 made the prison aware of this through dental requests,  
 23 grievances and verbally to the dentist. It has been  
 24 well over 200 days since plaintiff was granted leave  
 25 to be seen by the prison dental department. In addition  
 26 to the pain (which on a scale of 1 to 10 is a constant  
 27 3 to 7 reaching 10 at times) Plaintiff's cavities  
 28 are ~~not~~ discharging foul tasting fluid, which is

1 a good indication of infection/Abcess. It is common  
2 lay knowledge that such an infection can cause death  
3 and overtime other major health issues such as  
4 heart disease.

5

6 Analyses of the Rule of Law to the Facts and issues

7 The 8<sup>th</sup> Amendment embodies broad and idealistic concepts  
8 of dignity, civilized standards, humanity and decency, against  
9 which we must evaluate penal measures. ( S. Estelle v. Griswold  
10 429 U.S. 97 at 102, 97 S.Ct 798 (1976) ). Thus elementary

11 principals establish the government's obligation to provide  
12 medical care for those whom it punishes by incarceration

13 Estelle 429 U.S. at 103 A inmate must rely on prison  
14 authorities to treat his medical needs, if they fail

15 to do so those needs will not be met, such a failure  
16 may actually cause physical torture or a lingering death. —

17 ID.

18 This duty to provide medical care extends to  
19 providing dental care, as dental care is one  
20 of the most important medical needs of prisoners,  
21 the denial of which constitutes a violation of the 8<sup>th</sup>  
22 Amendment ( Dixon v. Bannister 845 F. Supp

23 2d 1136 at 1143 D.Nev 2012; and Hunt v. Dental  
24 Dep't

865 F.2d 198 200 (9<sup>th</sup> Cir 1989)).

25 In the case at bar the prison has unreasonably  
26 delayed (for over 200 days) ~~plaintiffs~~ access to  
27 dental care, which itself violates the 8<sup>th</sup> Amendment  
28 ( Jett v. Penner 439 F.3d 1091, 1096 (9<sup>th</sup> Cir 2006)

29

1 Plaintiff has a right to timely Adequate dental  
 2 care that consists of saving teeth that can  
 3 be saved (See Chance-v-Armstrong 143 F.3d 698  
 4 2d Cir 1995; Crowley 734 F.3d 967, 978 9<sup>th</sup> Cir, 2013;  
 5 Dixon 843 F. Supp at 1143; Hunt 865 F.2d at 200)  
 6 Furthermore the 8<sup>th</sup> Amendment Also Allows this court  
 7 to inquire into the future harm Plaintiff faces  
 8 if he doesn't receive Adequate timely care  
 9 (Helling-v-McKinney 509 U.S. 25 at 33, 113 S.Ct  
 10 2475 1993. The Supreme Court held, "It would  
 11 be odd to deny an injunction to inmates who plainly  
 12 proved an unsafe, life threatening condition in their  
 13 prison on the ground that nothing yet happened to  
 14 them" Helling 509 U.S. at 34. In Selah-v-guard  
 15 255 F. Supp 2.d 42 NDNY 2003 A preliminary  
 16 injunction was granted to an inmate seeking a  
 17 religious exemption from a ~~no~~ TB test.  
 18 As to the Four prong test the Supreme court of  
 19 the United State layed out in Winter-v-Natural  
 20 Res. Def. Council Inc., 1) The Likelihood of  
 21 Success on the merits, well Plaintiff has shown  
 22 A serious medical need, the prison's denial and  
 23 delay in treating the same 2) irreparable Harm,  
 24 Loss of teeth, extreme pain (see Lead-Mcmanus  
 25 343 F. Supp 386 DC Kansas 1982, irreparable Harm  
 26 includes pain/injury), the potential of infection and  
 27 even death, 3) The Balancing of hardships favors  
 28 Plaintiff, - Here Plaintiff has met this Burden,  
 29

1  
2 Because his only way to access care is by and through  
3 Prison Authorities, without which, As the Supreme  
4 Court held in estelle, IF the Prison Fails to meet  
5 Plaintiff's medical needs, those needs will not be  
6 met, causing physical torture or a lingering death,  
7 estelle 429 U.S. at 103- 4) and whether an injunction  
8 is in the public interest. It is in the public interest to  
9 treat those the State Incarcerates in a humane  
10 and dignified manner. Finally The Facts and Law  
11 must favor Plaintiff if he is to get relief. The Facts  
12 are clear, The Law is clear, the prison Must  
13 provide Adequate timely dental care in accord with  
14 established Standards of Community care, They  
15 have not, and this Court can compel them to do so.  
16 The Relief Plaintiff has Asked for is narrowly  
17 drawn and the Least intrusive means necessary to  
18 get Plaintiff treated for pain and infection.  
19

## 20 VII. Request for relief

21 Therefore , for good cause shown, Plaintiff  
22 requests this Court issue a preliminary Injunction,  
23 directed to Defendant James D Zurender, the Director  
24 of the Nevada Department of Corrections ("NDoc")  
25 "HDSP", To do the Following:  
26 1) To order the "HDSP" to provide Plaintiff with a  
27 Full oral exam  
28 2) Upon completion of the oral exam, which ought  
29 10

1

2 to be conducted by a Liscenced Dentist, Plaintiff  
3 Cavities be treated forthwith, by Providing fillings,  
4 Root canals or caps, for those teeth that can  
5 be saved.

6 3) for those teeth that cannot be saved, they  
7 should be extracted, and Plaintiff be provided with  
8 "partials", As all of the Above is not only the  
9 minimum established community Level of care, But  
10 Also the actual Policy of "NDOC".

11 (4) that treatment be Administered with 14 days  
12 of service of the ~~Temporary~~ Preliminary injunction-  
13 (5) that the court order the Clerk to transmit  
14 A copy of the preliminary injunction to the United  
15 States Marshall, That the court order the United  
16 States Marshalls ("USM") to serve defendant  
17 James Dzurenda at the NDOC Administrative office  
18 at 3955 W. Russell Rd Las vegas NV. 89118, and  
19 that the Clerk transmit a copy of the order to  
20 Serve to the USM, And that the Court order the  
21 "USM" to effect Service with 14 days of  
22 the receipt by the USM.

23

24

25

26

27

28

29

1 I understand that a false statement or  
2 Answer will subject me to penalties of perjury  
3 and/or sanction by this court

4  
5 I, Jesse Ann Ross, declare under penalty  
6 of perjury under the Laws of the United  
7 States of America (per 28 USC  
8 section 1746) and the Laws of the state  
9 of NEVADA (per NRS 53.045) that  
10 the foregoing is true and correct to  
11 the best of my personal knowledge.

12  
13 Signed on: 1 November 2017

14	X <del>Jesse</del> Ross
15	Jesse Ann Ross
16	Signed in Clark County NEVADA
17	HOSP #1095756
18	P.O. Box 650
19	Indian Springs NV.
20	89070
21	
22	
23	
24	
25	
26	
27	
28	

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Jesse Ross, declare:

I am over 18 years of age and a party to this action. I am a resident of Hosp

Prison,

in the county of Clark,

My prison address is: P.O. Box 650

Indian Springs NV 89070

On 2 November,  
(DATE)

I served the attached: Motion for Preliminary Injunction

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Director of Corrections-NDoc 3955 W.Russell  
Rd Las Vegas NV 89116

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 2 November 2017  
(DATE)

Jesse Ross  
(DECLARANT'S SIGNATURE)

# EXHIBIT

A

CASE NAME: Ross -v- Sandau  
CASE NO: 2:17-cv-02386-APG-GWF  
Contains 1 Page



**State of Nevada  
Department of Corrections**

**INMATE GRIEVANCE REPORT**

ISSUE ID# 20063045392

ISSUE DATE: 04/03/2017

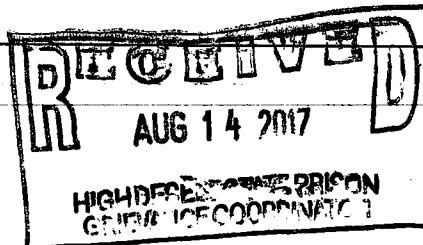
INMATE NAME	DOC ID	TRANSACTION TYPE	ASSIGNED TO		
ROSS, JESSE ARON	1095756	RTRN_INF	ABUEN		
LEVEL	TRANSACTION DATE	DAY SLEPT	FINDING	USER ID	STATUS
IF	05/31/2017	5	Granted	KMILLER	A
<b>INMATE COMPLAINT</b>					
<b>OFFICIAL RESPONSE</b>					
<p>Please be advised that the dental department was notified about your dental issue. We will place you on the list to be seen by the dental department regarding your dental problem. Please wait until you get seen on your unit day. Thanks.</p> <p>GRIEVANCE Upheld.</p>					

GRIEVANCE RESPONDER

Report Name: NVRIGR

Reference Name: NOTIS-RPT-OR-0217.4

Run Date: MAY-31-17 10:42 AM



Page 1 of 3

RECEIVED  
JUN 27 2017  
HDSP

Jesse Aron Ross  
109756  
High Desert State Prison  
PO Box 650  
Indian Springs, NV 89070-0650

#3942

11/03/04 0000.00  
113892  
21P 3011  
JUL 1 2004

Clerk

U.S. District Court - District of Nevada  
Lloyd D. George U.S. Courthouse

Legal mail  
333 Las Vegas Blvd. S. C. - Rm 1334  
Las Vegas NV. 89101